

UNITED STATE DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

FRANCIA BRICK, individually and on behalf of all others similarly situated

Plaintiff,

Civil Action No: 07-11369

V.

CITIGROUP INC., CHARLES PRINCE,  
THE PLAN'S ADMINISTRATIVE  
COMMITTEE OF CITIGROUP, INC.,  
THE 401(k) INVESTMENT COMMITTEE,  
and JOHN DOES 1 - 10,

ECF Filed

Defendants.

**PLAINTIFF FRANCIA BRICK'S MEMORANDUM IN SUPPORT OF SHAUN ROSE  
AND MARK GEROULO'S MOTION FOR THE CONSOLIDATION OF ALL RELATED  
ACTIONS, APPOINTMENT OF LEAD PLAINTIFF AND FOR APPROVAL OF  
THEIR SELECTION OF LEAD COUNSEL**

Plaintiff Francia Brick, by her undersigned counsel, respectfully submits this Memorandum in Support of the Motion of Shaun Rose and Mark Geroulo for Consolidation of Related Actions<sup>1</sup> and Appointment of Interim Lead Plaintiffs, Co-Lead Counsel and Liaison Counsel. Plaintiff respectfully requests that the Court appoint Shaun Rose and Mark Geroulo as Interim Lead Plaintiffs, Schiffrin Barroway Topaz & Kessler, LLP (“SBTK”) and Schatz Nobel

The motion seeks the consolidation of the following actions: *Stephen Gray v. Citigroup Inc., et al.*, Civil Action No. 07 Civ. 9790 (SHS); *Shaun Rose v. Citigroup Inc., et al.*, Civil Action No. 07 Civ. 10294; *Meredith Tranberg v. Citigroup Inc., et al.*, Civil Action No. 07 Civ. 10341; *Anton Rappold v. Citigroup Inc., et al.*, Civil Action No. 07 Civ. 10396; *Samier Tadros v. Citigroup Inc., et al.*, Civil Action No. 07 Civ. 10442; *Stephan Fiorino v. Citigroup Inc., et al.*, Civil Action No. 07 Civ. 10458; *James Bolla v. Citigroup Inc., et al.*, Civil Action No. 07 Civ. 10461; *Mark Geroulo v. Citigroup Inc., et al.*, Civil Action No. 07 Civ. 10472; *Alan Stevens v. Citigroup Inc., et al.*, Civil Action No. 07 Civ. 11156; *Stephen Goldstein v. Citigroup Inc., et al.*, Civil Action No. 07 Civ. 11158; *Chris Southard v. Citigroup Inc., et al.*, Civil Action No. 07 Civ. 11164; as well as the instant action.

Izard (“SNI”) as Interim Co-Lead Counsel, and Dealy & Silberstein, LLP (“DS”) as Interim Liaison Counsel in the Citigroup ERISA action.

### **A. Procedural Background**

Plaintiffs listed in Note 1, *supra*, each filed a complaint in this District against Citigroup, Inc. (“Citigroup” or the “Company”) and certain Citigroup employees (collectively, “Defendants”) alleging that Defendants breached their fiduciary duties under the Employee Retirement Income Securities Act of 1974 (“ERISA”) in connection with offering the Citigroup Common Stock Fund as an investment option in the Citigroup Corporation 401(k) Plan and the Citibuilder 401(k) Plan for Puerto Rico (the “Plans”). Specifically, all plaintiffs allege that Defendants knew or should have known that the Fund was an imprudent investment as a result of Citigroup’s massive risks and liabilities within its mortgage lending business. All plaintiffs seek relief pursuant to §§ 409 and 502 of ERISA, 29 U.S.C. §§ 1109, 1132, on behalf of the Plans and all participants in, or beneficiaries of, the Plans who sustained losses to their retirement accounts.

On or about November 26, 2007, Plaintiffs Stephen Gray and Samier Tadros (the “Gray Plaintiffs”) moved to consolidate the ERISA actions and appoint Wolf Popper LLP and Harwood Feffer LLP as Interim Co-Lead Counsel for the class. On or about December 11, 2007, Plaintiff Steven Goldstein, through counsel Stull, Stull & Brody, filed a similar motion. On or about December 13, 2007, Plaintiffs Shaun Rose and Mark Gerould (the “Rose Plaintiffs”) filed an Opposition to the Gray Plaintiffs’ motion and their own motion to consolidate the actions and appoint interim lead plaintiffs, co-lead counsel and liaison counsel. The Honorable Sidney H. Stein entered an Order on December 20, 2007 setting a briefing schedule for motions to consolidate and appoint interim lead plaintiff and lead counsel in these actions. On December 26, 2007, the Rose Plaintiffs filed a second opposition to the above motions and their own

motion to consolidate the actions and appoint interim lead plaintiffs, co-lead counsel, and liaison counsel.

Plaintiff Francia Brick submits this Memorandum in support of the Rose Plaintiffs' December 26, 2007 Motion, and respectfully requests that the Court appoint Shaun Rose and Mark Geroulo as Interim Lead Plaintiffs, SBTk and SNI as Interim Co-Lead Counsel, and DS as Interim Liaison Counsel for this and all of the related and/or consolidated Citigroup ERISA actions. Plaintiff Brick also hereby joins in all other papers filed in support of the Rose Plaintiffs' Motion for Consolidation of Related Actions and Appointment of Interim Lead Plaintiffs, Co-Lead Counsel and Liaison Counsel.

**B. Plaintiff Brick's Counsel is Experienced and Well-Known in this Area of Law.**

Plaintiff Brick's counsel, Lockridge Grindal Nauen P.L.L.P. ("LGN") and Sanford Wittels & Heisler, LLP ("SWH"), are national leaders in the practice of complex and class action litigation, with national reputations for effective, successful representation of its clients based on outstanding results in complex class action litigation, including extensive experience in securities fraud, antitrust, consumer fraud, ERISA, Title VII and employment, and shareholder derivative litigation over the past thirty years. The firms are well known for an aggressive, fast-paced approach to class action litigation. The firms' attorneys have extensive trial experience, and the firms and their staff are seasoned in the art of managing complex class action litigation involving multiple defendants and thousands of class members in federal jurisdictions across the country.

LGN and/or SWH have worked extensively as co-counsel to SBTk and/or SNI in numerous complex class actions, including the following ERISA matters:

In re Delphi Corporation Securities, ERISA, and Shareholder Derivative Litigation,  
Master Case No. 05-md-1725 (E.D. Mich.);

In re Merck & Co., Inc., Securities, Derivative & ERISA Litigation, 3:050cv-1151 (D.N.J.);

In re Fremont General Corporation Litigation, Case No. 02:07-cv-02693 (C.D. Cal.);

In re Tyco International Ltd., ERISA, Civil File No. 02-cv-1357 (D. N.H.); and

Boland et al v. Merrill Lynch & Co., Inc. ERISA Litigation, Civil File No. 07-cv-11054 (S.D.N.Y).

Based on this experience, the undersigned submit that proposed co-lead counsel SBTk and SNI are well qualified to handle large class actions generally, and ERISA class actions in particular.

**1. LGN**

Established in 1978, LGN has served as Lead or Co-Lead Counsel in numerous complex litigation matters including:

In re FedEx Ground Package System, Inc., Employment Practices Litigation, MDL No. 1700, (N.D. Ind.);

Nerland et al v. Caribou Coffee Co., Inc., Civil File No. 0-05-cv-01847 (D. Minn.);

Peterson v. BASF Corp., Civil No. C2-97-295 (Norman County District Court, Minnesota);

In Re Laminates, MDL No. 1368, (S.D.N.Y.) (Counsel to Miami Sub-class);

In re CertainTeed Corp. Roofing Shingle Products Liability Litigation, MDL No. 1817 (E.D. Penn.);

In re Select Comfort Corporation Securities Litigation, Master File No. 99-884 (D. Minn.);

In re Baycol Products Litigation, MDL No. 1431 (D. Minn.);

In re Air Cargo Shipping Services Antitrust Litigation, 1:06-md-1775-CBA-VVP (E.D.N.Y);

In re Aspartame Antitrust Litigation, Master Docket No. 0601732-LDD (E.D. Pa.);

In re Urethane Antitrust Litigation, MDL No. 1616 (D. Kan.);

In re Pressure Sensitive Labelstock Antitrust Litigation, MDL No. 1556 (M.D. Pa.);

In re Bulk Popcorn Antitrust Litigation, Civil No. 3-89-710 (D. Minn.);

In re Monosodium Glutamate Antitrust Litigation, MDL No. 1328 (D. Minn.);

In re Polypropylene Carpet Antitrust Litigation, MDL No. 1075 (N.D. Ga.);

In Re Microcrystalline Cellulose Antitrust Litigation, MDL No. 1402 (E.D. Pa.);

In Re Lutheran Brotherhood Variable Insurance Products Co. Sales Practices Litigation, MDL No. 1309 (D. Minn.);

Gary Meyers v. The Guardian Life Insurance Company of America, Inc. Litigation, Civil No. 2:97CV35-D-B (N.D. Miss.);

In re Summit Medical Systems, Inc. Securities Litigation, Master File No. 97-558 (D. Minn.);

In re Digi International Inc. Securities Litigation, Master File No. 97-5 (D. Minn.);

In re Catfish Antitrust Litigation, MDL No. 928 (N.D. Miss.);

Benacquisto, et al. v. American Express Financial Corp. et al., Master File No. 00-1980 (D. Minn.), Civil Action No. 96-18477 (Hennepin County District Court Minn.);

Gary G. Smith, et al. v. Little Caesar Enterprises, Inc., et al. (Little Caesar Franchise Litigation), Civil No. 93 CV 74041 DT (E.D. Mich.);

In re Piper Funds, Inc. Institutional Government Income Portfolio Litigation, Master File No. 3-94-587 (D. Minn.);

In re Residential Doors Antitrust Litigation, MDL No. 1039 (E.D. Pa.);

In re LaserMaster Technologies, Inc. Securities Litigation, Master File No. 4-95-631 (D. Minn.);

Richard J. Rodney, Jr., et al. v. KPMG Peat Marwick, 4-95-CIV-800 (D. Minn.);

In re Citi-Equity Group, Inc. Securities Litigation, Master File No. 3-94-1024 (D. Minn.);

Lockwood Motors, Inc., et al. v. General Motors Corporation, Master File No. 3-94-1141 (D. Minn.);

David L. Antonson, et al. v. Leon H. Robertson, et al. (American Carriers Securities Litigation) Civ. No. 88-2567 (D. Kan.);

In re Steel Drums Antitrust Litigation, MDL No. 887 (S.D. Ohio);

In re New Steel Pails Antitrust Litigation, Master File No. C-1-91-213 (S.D. Ohio);

In re Unisys Savings Plan Litigation, Master File No. 91-3067 (E.D. Pa.); and

George Guenther, et al. v. Cooper Life Sciences, et al. (Cooper Life Sciences Securities Litigation), C 89-1823 MHP (N.D. Cal.).

The firm also has taken an active role on behalf of plaintiffs in the following litigation:

Funeral Consumers Alliance, Inc., et al. v. Service Corporation International, et al., No. H-05-3394 (S.D. Tex.);

In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation, MDL No. 1720 (E.D.N.Y.);

In re Worldcom, Inc. Securities Litigation No. 02-CV-3288 (S.D.N.Y.);

In re Credit Suisse – AOL Securities Litigation, Case No. 1:02-CV-12146-NG (D. Mass.);

In re Exxon Valdez Oil Spill Litigation, Case No. A89-0095-CV (D. Alaska);

Haritos, et al. v. American Express Financial Advisors, Inc., 02-2255-PHX-PGR (D. Ariz.);

In re King Pharmaceuticals, Inc. Securities Litigation, No. 2:03-CV-77 (E.D. Tenn.);

In re AOL Time Warner Securities Litigation, MDL No. 1500 (S.D.N.Y.);

In re Vioxx Product Liability Litigation, MDL No. 1657 (E.D. La.);

In re Scientific-Atlanta, Inc. Securities Litigation, No. 1:01-CV-1950 (N.D. Ga.);

In re OM Group, Inc. Securities Litigation, No. 1:02 CV 2163 (N.D. Ohio);

Ohio Public Employees Retirement System, et al. v. Freddie Mac, et al., MDL No. 1584 (S.D.N.Y.);

In re Federal National Mortgage Association Securities, Derivative and ERISA Litigation, MDL No. 1668 (D.D.C.);

Rodney v. OCA, Inc., et al., No. 05-2219 (E.D. La.);

In re Telxon Securities Litigation, No. 5:98-CV-2876 (N.D. Ohio);

In re Retek, Inc. Securities Litigation, Master File No. 02-4209 (D. Minn.);

In re Rezulin Litigation, MDL No. 1348 (S.D. N.Y.);

In re Serzone Productions Liability Litigation, MDL No. 1477 (S.D.W. Va.);

In re Tamoxifen Citrate Antitrust Litigation, MDL No. 1408 (E.D. N.Y.);

In re Meridia Products Liability Litigation, MDL No. 1481 (N. D. Ohio);

In Re Propulsid Products Liability Litigation, MDL No. 1355 (E.D. La.);

In re Methionine Antitrust Litigation, MDL No. 1311 (N.D. Cal.);

In re Flat Glass Antitrust Litigation, MDL No. 1200 (W.D. Pa.);

Chemical Distribution, Inc., et al. v. Akzo Nobel Chemicals, et al., MDL No. 1226 (N.D. Cal.);

In re Connecticut General Life Insurance Co. Premium Litigation, MDL No. 1336 (C.D. Cal.);

In re Lease Oil Antitrust Litigation, MDL No. 1166 (S.D. Tex.);

In re Nasdaq Market-Maker Antitrust Litigation, MDL No. 1023 (S.D.N.Y.);

John S. Lawrence v. Philip Morris Companies, Inc., et al. (Philip Morris Securities Litigation), Civ. No. 94-1494 (E.D.N.Y.);

Leetate Smith, et al. v. Merrill Lynch & Co., et al. (Orange County Bond Litigation), No. SACV-94-1063-LHM(EEx) (C.D. Cal.);

Nelsen v. Craig-Hallum (Craig-Hallum Securities Litigation), Master File No. 4-86-135 (D. Minn.);

Johnson v. Kives (K-Tel Securities Litigation), Master File No. 4-85-1216 (D. Minn.);

In re Endotronics Securities Litigation, Master File No. 4-87-130 (D. Minn.);

In re Wirebound Box Antitrust Litigation, MDL No. 793 (D. Minn.);

In re Domestic Air Transportation Antitrust Litigation, MDL No. 861 (N.D. Ga.);

In re ICN/Viratek Securities Litigation, 87 Civ. 4296 (S.D.N.Y.);

Steven S. Mitchell v. Thousand Trails, Inc. (Thousand Trails Securities Litigation), Civ. No. C86-146 (W.D. Wash.);

In re Medtronic, Inc. Implantable Defibrillator Products Liability Litigation, MDL No. 05-1726 (JMR/AJB) (D. Minn.);

In re Guidant Corp. Implantable Defibrillators Products Liability Litigation, MDL No. 05-1708 (DWF/AJB) (D. Minn.);

Danis v. USN Communications, Inc., et al., No. 98 C 7482 (N.D. Ill.);

In re Ancor Communications, Inc. Securities Litigation, Master File No. 97-1696 (D. Minn.);

In re Ceridian Corp. Securities Litigation, Master File No. 97-2044 (D. Minn.);

Joseph D. Chutich v. Green Tree Acceptance, Inc., Master File No. 3-88-869 (D. Minn.);

In re Linerboard Antitrust Litigation, MDL No. 1261 (E.D. Pa.);

In re Hydrogen Peroxide Antitrust Litigation, MDL No. 1682 (E.D. Pa.);

In re Ethylene Propylene Diene Monomer (EPDM) Antitrust Litigation, MDL No. 1542 (D. Conn.);

In re NBR Antitrust Litigation, Master Docket Civil Action No. 03-1898 (W.D. Pa.);

In Re Bulk Vitamins Antitrust Litigation, MDL No. 1285 (D.D.C.);

In re Foundry Resins Antitrust Litigation, Case No. 2:04-md-1638, Master Docket No. 2:04-cv-415 (S.D. Ohio);

In re Dynamic Random Access Memory (DRAM) Antitrust Litigation, Case Number: M:02-cv-1486 (N.D. Cal.);

In re Automotive Paint Antitrust Litigation, MDL No. 1426 (E.D. Pa.);

In re Compact Disc Minimum Advertised Price Antitrust Litigation, MDL No. 1361 (D. Maine);

In re Polyester Staple Fiber Antitrust Litigation, MDL No. 1516 (W.D.N.C.);

In re Sorbates Antitrust Litigation, Court File No. C-98-4886 CAL (N.D. Cal.);

In re Sodium Gluconate Antitrust Litigation, MDL No. 1226 (N.D. Cal.);

In re Laser Eye Surgery Antitrust Litigation, MDL No. 1202 (D. Ariz.);

In re Commercial Tissue Products Antitrust Litigation, MDL No. 1189 (M.D. Fla.);



In re Commercial Explosives Antitrust Litigation, MDL No. 1093 (C.D. Utah);

In re Minnesota Drug Pricing Litigation, Court File No. MC95-9632 (Hennepin County, MN District Court);

Red Eagle Resources Corp., et al. v. Baker Hughes, Inc., et al. (Drill Bits Antitrust Litigation), Civil No. H-91-627 (S.D. Tex.);

In re Carbon Dioxide Antitrust Litigation, MDL No. 940 (M.D. Fla.); and

Cimarron Pipeline Construction, Inc. v. National Council on Compensation Insurance, Civil No. 89-822-T (W.D. Okla.).

## **2. SWH**

SWH is a law firm with offices in Washington, D.C., New York, and New Jersey that specializes in employment discrimination, wage and hour, consumer, and complex corporate and securities class action litigation, and has represented thousands of individuals and class members in some of the major class action cases in the United States.

William R. Weinstein is the SWH partner with the most substantial experience in the field of complex corporate and securities related class actions, as well as the field of consumer fraud. Some of the relatively recent reported favorable decisions in which Mr. Weinstein has been involved include: Lonner v. Simon Property Group, Inc., 31 A.D.3d 398, 817 N.Y.S.2d 503 (2d Dept. 2006) (reversing dismissal of complaint alleging deceptive gift card practices); Emilio v. Robison Oil Co., 28 A.D.3d 417, 813 N.Y.S.2d 465 (2d Dept. 2006) (reversing grant of summary judgment on complaint alleging improper consumer pricing practices); Broder v. MBNA Corp., 281 A.D.2d 369, 722 N.Y.S.2d 524 (1st Dept. 2001) (settlement valued in excess of \$22 million); Rodney v. KPMG, 143 F.3d 1140 (8th Cir. 1998) (reversing grant of summary judgment ) (\$13.9 million settlement against accountants in mutual fund securities fraud case); In re Avon Sec. Litig., 1998 U.S. Dist. LEXIS 18642 (S.D.N.Y. Nov. 19, 1998) (granting class certification); In re Henry Hackel, 245 A.D.2d 124, 665 N.Y.S.2d 655 (1st Dep't 1997), appeal

denied, 92 N.Y.2d 814, 681 N.Y.S.2d 474 (1998) (consolidated AMEX arbitration against broker/dealer on behalf of 97 claimants arising out of options Ponzi scheme) (award in excess of \$825,000 after more than 15 hearing days); Winston v. Mezzanine Investments, L.P., 648 N.Y.S.2d 493 (Sup. Ct. N.Y. County 1996) (awarding judgment in excess of \$10 million after week-long trial for breach of partnership agreement); Krouner v. American Heritage Fund, 1996 U.S. Dist. LEXIS 9783 (S.D.N.Y. July 15, 1996) (sustaining complaint alleging securities fraud by mutual fund); In re Bairnco Corp. Sec. Litig., 148 F.R.D. 191 (S.D.N.Y. 1993) (decision rejecting privilege assertions followed by \$3 million settlement).

A substantial number of Mr. Weinstein's other successes in consumer and securities class actions are unreported. See, e.g., Lan v. Erie Family Life Ins. Co., et al., No 06-114 (W.D. Pa 2006) (settlement in excess of \$5 million involving minority freeze-out awaiting final approval); Opperman v. Verizon Wireless, No. BC326764 (Ca. Sup. Ct. L.A. County 2006) (nationwide settlement valued in excess of \$10 million for deceptive practices involving sale of Motorola V710, with consumers entitled to up to 100% refunds); Veliz v. Hollywood Enter. Corp., No. CGC-02-40692 (Ca. Sup. Ct. S.F. County 2005) (late fee case resolved as part of nationwide settlement); Angeline v. Emigrant Savings Bank, No 02-08459 (N.Y. Sup. Ct. Westchester County 2004) (settlement resulting in 100% refunds of fax fees charged in connection with payoff letters); Winn v. Symons Int'l Group, Inc., et al., IP 00-0310-C-B/S (S.D. Ind. Feb. 19, 2002) (denying all of individual, corporate and accounting defendants' motions to dismiss plaintiffs' Section 10(b) class action complaint); In re Verizon Three Way Calling Litig., No. 603484-01 (Supreme Ct. N.Y. County) (class action settlement providing full refund of improper three way calling charges of up to \$2 million collected); Greenwald v. Manhattan Life Ins. Co., No. 604758-99 Supreme Ct. N.Y. County) (class action settlement providing 50%-100% refund

of excessive smoker life insurance rates charged to non-smoker class members); Duke v. ReliaStar Life Ins. Co., No. CT 99-08254 (MN. D. Ct. Hennepin County) (settlement in principle in multi-million dollar vanishing premium insurance case after court denied defendant's motion to dismiss from bench) (argued by Mr. Weinstein); In re Del-Val Sec. Litig., Master No. MDL 872 (S.D.N.Y.) (combined \$5.5 settlement against underwriters and accountants).

### **C. Conclusion**

Plaintiff Francia Brick, by her counsel, respectfully requests that the Court enter proposed Pretrial Order No. 1 submitted by SBTK, SNI and D&B, appointing Rose and Geroulo as Interim Lead Plaintiffs, and approving their selection of SBTK and SNI as Interim Co-Lead Counsel pursuant to Fed. R. Civ. P. 23(g) and D&S as Interim Liaison Counsel.

Dated: January 4, 2008

Respectfully submitted,

### **SANFORD WITTELS & HEISLER, LLP**

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